IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 3023 OF 1998.

M/s.Asia Engineering Co.,
a firm duly registered under the
provisions of the Indian
Partnership Act 1932, having
their office at 9, Cambrige Court,
Pedder Road, Mumbai 400 026. ... Plaintiffs.

Versus.

M/s.Wainganga Sahakari Sakhar
Karkhana Ltd., having its
registered office at Devhada (BK)
Tumsar 441 912, Taluka Mohadi
(Bhandara), Maharashtra, a duly
registered cooperative society,
registered under the Maharashtra
State Co-operative Societies Act,
1960. ... Defendants.

Shri G.M.Shetty for the Plaintiffs.

None for the Defendants.

CORAM : ABHAY S.OKA, J.

DATED : 6th August, 2007.

ORAL JUDGMENT.:

1. This suit is listed under the caption "Undefended suits for exparte decree". Shri Dakshak Ratilal Parekh, a partner of the Plaintiffs-firm has filed an affidavit of evidence which is already taken on record. Along with the said affidavit of evidence, the Plaintiffs have filed various original documents.

2. The case of the Plaintiffs is that as per the orders placed by the Defendants between 3rd May 1996 and

18th May 1996, the Plaintiffs sold, supplied and delivered to the Defendants goods of the value of Rs.3,55,225.20. According to the case of the Plaintiffs, the Defendants made part payment of Rs.2,25,000/- on 7th June 1996. It is stated that the Plaintiffs in their books of account have maintained a consolidated account of the Defendants during the normal course of business and all transactions between the parties of the sale of goods and on account part payments received from the Defendants have been duly entered in the said consolidated account. It is stated that as per the said account, on 7th June 1996, the Defendants were liable to pay a sum of Rs.1,30,225.20 to the Plaintiffs.

3. As the said amount was not paid, the Plaintiffs served a statutory notice under section 164 of the Maharashtra Cooperative Societies Act, 1960 through their Advocate. It is stated that the said notice was duly received by the Defendants as well as by the Registrar of Co-operative Societies. As the payment was not made, the present suit is filed for recovery of the amount with interest.

4. Along with the affidavit of evidence, the Plaintiffs have filed the office copies of seven invoices under which the goods were sold and delivered.

The Plaintiffs have also placed on record the delivery challans of the transporters. Office copy of the notice along with acknowledgement by the Defendants and the Registrar of Co-operative Societies are also placed on record. The Plaintiffs have annexed to the plaint an extract of the account of the Defendants maintained by the Plaintiffs. The said extract as well as other documents produced by the Plaintiffs has been duly proved by the affidavit of Shri D.R.Parekh. The claim in the suit is also duly proved by the said affidavit. There is no contest by the Defendants. On the aforesaid invoices it is stated that the interest will be payable at the rate of 24% per annum on the unpaid amount. In this suit the Plaintiffs have claimed interest at the rate of 18% per annum. In the circumstances, the Plaintiffs are entitled to a decree against the Defendants.

5. Hence the suit is decreed in terms of prayer clause (a). The Defendants are directed to pay costs of the suit to the Plaintiffs.

6. The Plaintiffs will be entitled to the refund of Court fees, if any, as per the Rules.

7. The certified copy is expedited.

Judge.